

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ECOMARES INCORPORATED,

Plaintiff,

vs.

ANGELINA OVCHARIK aka
ANGELINA SCHAEFER,

Defendant.

3:06-CV-0102-BES (VPC)

**REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE**

This report and recommendation is made to the Honorable Brian E. Sandoval, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(B)(1)(b) and LR IB 1-4. Before the court is defendant's motion for attorney's fees and costs (#165). No opposition was filed.

On July 15, 2008, judgment was entered on defendant's motion for order to show cause (#152), and plaintiff's complaint (#2) was dismissed with prejudice (#164). The District Court further ordered that defendant be awarded attorney's fees and costs expended in preparing for the Rule 30(b)(6) deposition and directed defendant to file a statement of attorney's fees and costs for those legal services within fourteen days after entry of the Court's order (#163).

I. Discussion

Calculation of reasonable attorney's fees is a two-step process. First, the court computes the "lodestar" figure, which requires the court to multiply the reasonable hourly rate by the number of hours reasonably expected on the litigation. *Fischer v. SJB-P.D., Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000) (citation omitted). Defendant's counsel attests that the law firm billed an hourly rate of \$350.00 for the partner's time, and an hourly rate of \$250.00 for an associate. The court is familiar with the customary

1 billing rates for legal services in similar cases and finds that these hourly rates are reasonable for the
2 legal services rendered.

3 Defendant's counsel provides the court with an itemization and description of the legal services
4 provided by date, the attorney who performed the work, hourly rate, and time expended, as well as the
5 affidavit of Douglas Gerrard, lead counsel for defendant (#165, Ex. C). As more fully set forth in this
6 court's report and recommendation (#162), this court well aware of the circumstances leading to
7 dismissal of this action. Although the legal services rendered in connection with the Rule 30(b)(6)
8 deposition of plaintiff may appear excessive, the court has reviewed the entries carefully and concludes
9 that the hours expended – 39.75 – are reasonable.

10 Having concluded that the lodestar figure of \$11,512.50 is reasonable, the court must next decide
11 whether to increase or reduce the lodestar amount based upon the *Kerr* factors not already included in
12 the initial lodestar calculation. *Fischer*, 214 F.3d 1115, 1119. Local Rule 54-16 outlines the following
13 factors to consider: (1) the results obtained and the amount involved; (2) the novelty and difficulty of
14 the questions involved; (3) the skill requisite to perform the legal services properly; (4) the preclusion
15 of other employment by the attorney due to acceptance of the case; (5) whether the fee is fixed or
16 contingent; (6) the time limitations imposed by the client or the circumstances; (6) the experience,
17 reputation, and ability of the attorneys; (7) the undesirability of the case, if any; (8) the nature and length
18 of the professional relationship with the client; and (9) awards in similar cases.¹ Defendant's counsel
19 have addressed each of these factors to the satisfaction of this court, and the court finds that there is no
20 basis to deviate from the lodestar calculation in the amount of \$11,512.50. The court has further
21 reviewed the costs of \$395.40, which are specifically attributable to the plaintiff's failure to attend the
22 Rule 30(b)(6) deposition and finds they are reasonable.

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27 ¹The court has already considered the time and labor required and the customary fee. LR 54-
16(b)(3)(B) and (F).

